

ALLEGED SEIZURE OF THE AMERICAN BARQUE "ADRIATIC."

[To accompany Joint Resolution H. R. No. 27.]

MARCH 29, 1860.

Mr. BURLINGAME, from the Committee on Foreign Affairs, submitted
the following

REPORT.

The Committee on Foreign Affairs, to whom was referred the resolution introduced by Mr. Taylor, of Louisiana, make the following report:

That, from the evidence before the committee, it appears that the American barque *Adriatic*, Captain J. B. Durham master, left Belfast, in Maine, on 31st October, 1856, loaded with lime and hay, bound to Savannah, Georgia; on the night of the 2d of November, at 10 o'clock and thirty minutes, when about seventy miles from New York, the barque being under double-reefed topsails, was steering by the wind, then blowing fresh from the southwest, when the watch on the look-out made a light about three points on the weather-bow. Captain Durham then caused a good and sufficient signal light, appropriated for such purposes, to be hoisted in a proper position to be seen by the approaching vessel which came steadily towards them. It was apparent to the captain and the crew on deck that the approaching vessel, which proved to be a steamer, would clear them if she continued the course she was then steering; but when within about a third of a mile the course of the steamer was suddenly changed, and she bore down upon the barque. Captain Durham, fearing that a collision would take place, put down the helm of his vessel; the barque came into the wind, so that her sails were all shaking and her headway nearly stopped. This was evidently the only remedy present to Captain Durham to prevent the steamer running over his vessel. If he had not put his helm down the steamer would have struck his vessel amid-ship, and, by her superior weight and impetus, would have buried the barque in the ocean. As it was, the steamer struck the barque forward, carrying away her jib-boom, bowsprit, and cut-water, and starting all the starboard bow from the deck frame. The steamer, subsequently ascertained to be the French ship *Lyonnais*, pursued her course until she was lost from the sight of the barque in the distance.

It was also afterwards ascertained that the steamer did not appear to have received any injury from the collision until ten minutes after it took place; then it was discovered that she had sprung aleak, and in thirty-six hours she disappeared in the waves.

After the collision Captain Durham, having lost sight of the steamer, and having heard no signals of distress, shaped his course for the nearest port to repair damages. He arrived at Gloucester, Massachusetts, where he reported the facts relative to the collision, repaired his vessel, at a cost of about \$2,000, and proceeded to Savannah, Georgia, where he loaded with a cargo of timber for France. He arrived with the Adriatic at the French port of La Ciotat on the 10th of February, 1857. On the 20th of the same month he finished discharging his cargo, paid all his custom dues, and cleared for Sicily.

The following day an officer from the customs reported to him that there was a mistake in his clearance at the custom-house, and requested him to go to the customs and have the matter rectified, which he did. After a few minutes he was given to understand by the French officials that they would keep his papers, and that his freight, which amounted to about \$4,000, would be detained.

There being no American consul at Ciotat, Captain Durham went to Marseilles, where he made complaint before the American consul in relation to the outrages alleged by him to have been received.

Captain Durham states that, during his absence from his vessel, the civil authorities ordered his mate to unhang the rudder, and unbend the sails of the vessel, threatening, in case of refusal, to put him and all hands in prison.

Captain Durham, upon his return, ascertained that his vessel and freight were detained at the instance of the Messrs. Gauthier, owners of the steamer *Lyonnais*, on a demand for damages for the loss of the steamer in consequence of the collision above referred to, it having been charged that the collision and the loss of the steamer occurred through the default of Captain Durham.

It having been first determined that the courts of France had jurisdiction, by article 14th of the code of Napoleon, of cases of this sort, the suit of the owners of the *Lyonnais* against Captain Durham and the barque *Adriatic*, was tried before the tribunal of commerce of Marseilles, and was decided in favor of Captain Durham on the 3d of April. The judgment of the court—a copy of which is before the committee—and which recounts minutely all the circumstances of the collision, completely exonerates Captain Durham from all blame, and awards the barque 500 francs per day for every day she was detained by the prosecutors.

About the 8th of the same month the case was taken up by appeal to the imperial court of Aix. Before the determination of the case it was referred by the court to a commission of three shipmasters. These commissioners went on board the barque and examined the signal light raised by Captain Durham at the time of the collision, and reported that the light was of a sufficient size, and was set in a proper position ten minutes before the collision took place. They also reported that the steamer violated a well-known regulation by

putting her wheel to starboard, and endeavoring to pass to the left instead of the right.

After this report was made the case was again brought before the imperial court of Aix. Notwithstanding the report of its own experts, the court decided against the Adriatic upon the following grounds :

1st. That the light was *too small* ; or 2d, that it was placed *in a bad position* ; or 3d, that it was *set too late*.

The case was decided on the 24th of December, 1857, after Captain Durham and the Adriatic had been detained ten months.

The committee do not deem themselves called upon to express an opinion as to the propriety of the subsequent acts of Captain Durham in connexion with his vessel. It appears, however, from his statement, that finding his vessel, freight, and 2,000 francs of his private property confiscated, and considering that he had been deeply wronged by the condemnation of his vessel, and not knowing at what moment he might be arrested and placed in prison for non-payment of the value of the Lyonnais, (1,700,000 francs,) he deemed it just to himself and the owners of the Adriatic to attempt an escape. "Accordingly," as he states, he "left the port of Marseilles without asking leave, and arrived with the Adriatic at Savannah in the United States, on the 18th of March, 1858, after an absence of more than thirteen months, and after suffering a pecuniary loss much greater than the value of his vessel."

The committee are of the opinion that the facts above presented, which they believe cannot be controverted, present a case imperatively demanding the notice and interposition of the government of the United States. It is clear that the detention and final condemnation of an American vessel have taken place solely on account of an alleged violation of the municipal laws of France, (promulgated no later than 1852,) by that vessel on the high seas, within seventy miles of the American coast, and on the great highway of the American coasting trade. The tribunal of commerce of Marseilles says in its judgment, "that the Brothers Gauthier, (the prosecutors in this suit,) do in no way prove that American ships are obliged to have a regular light on board ; that, on the contrary, it results from the documents furnished, that there is not any law or regulation in the United States which oblige sailing vessels to have such lights in open sea." It is well known that no such obligation is imposed by any statute of the United States, and the committee have searched in vain for any authorities recognized as of binding force in this country upon questions of maritime law, declaring the duty of sailing vessels to carry permanent lights, except in the common passage-ways of a port or river.

The final decision of the French tribunal in this case assumes the right of applying the municipal laws of France to the regulation of the police or management of all vessels on the high seas. There can be no limit to the application or extension of this principle if its right is once admitted. All commercial nations, and particularly our own, which has always so jealously guarded its maritime rights, should resist this dangerous encroachment. However obligatory may be the duty of the government of the United States to demand reparation for a grievous wrong committed by a foreign government against one

of its citizens, that duty is insignificant compared with its obligation to resist the establishment of principles which may impose fetters upon all American commerce.

The committee would observe that the examination of this case, and the discussion which the facts therein has caused in commercial districts, have convinced them that the laws in relation to liabilities by collision demand revision on the part of all the great commercial nations. The laws of different nations, while they should be simple and universal, are repugnant and conflicting on this subject. The submission to the leading commercial nations of propositions for a modification of the laws upon the subject of collisions might be very properly submitted by a government having so important maritime interests as our own. The consideration of the question growing out of the facts above presented may have an important bearing upon such negotiations. The committee, therefore, unanimously report in favor of the adoption by the House of the accompanying resolutions introduced by Mr. Taylor, of Louisiana.